International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances

List of issues in relation to the report submitted by Honduras under article 29 (1) of the Convention*

I. General information

1. Please indicate whether the State party intends to make the declarations provided for in articles 31 and 32 of the Convention, which relate to the Committee's competence to receive and consider individual and inter-State communications (arts. 31-32).

2. Please provide detailed information on the competencies of the Office of the National Commissioner for Human Rights in the area of enforced disappearance and on the activities undertaken by this institution in relation to the Convention, including specific examples. Please also provide information on the complaints of enforced disappearance considered by this body.

II. Definition and criminalization of enforced disappearance (arts. 1-7)

3. Please provide up-to-date statistical information, disaggregated by sex, age and nationality, on the number of disappeared persons in the State party, specifying their date of disappearance and how many of them have been located, and the number of cases in which there was some form of State participation, within the meaning of the definition of enforced disappearance contained in article 2 of the Convention. With regard to the disappearances of the Honduran migrants mentioned in paragraph 20 of the State party's report (CED/C/HND/1), please provide up-to-date statistical data, disaggregated by sex and age, and additional information on how many of these disappearances might be enforced. The Committee would also like to receive information on the number of non-Honduran migrants who have disappeared and on how many might be victims of enforced disappearance (arts. 1-3 and 12).

4. Bearing in mind the reforms of the Criminal Code mentioned in the report, in particular the adoption of article 333-A, in April 2012, aimed at defining enforced disappearance and establishing it as a separate offence under the terms of article 2 of the Convention, please:

(a) Specify whether the phrase "thereby limiting or denying their recourse to the applicable constitutional and procedural guarantees" of article 333-A of the Criminal Code has been interpreted in court, and if it has, indicate which judicial authority interpreted it and how (art. 2);

* Approved by the Committee at its thirteenth session (4-15 September 2017).

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(b) Clarify whether the phrase referred to in subparagraph (a) should be understood as a necessary element of intent for an act to be considered criminal conduct or whether, on the contrary, it should be understood as a consequence thereof (art. 2);

(c) Provide updated information on the "improvements" mentioned in paragraph 15 of the State party's report. In addition, please provide information on whether the widespread or systematic practice of enforced disappearance has been defined explicitly as a crime against humanity, in accordance with article 5 of the Convention, as indicated in paragraph 24 of the report. If it has, please provide information on the proposed or adopted definition and the consequences for the commission of this crime, including the penalties;

(d) Clarify, in relation to the penalties specified in article 333-A of the Criminal Code, as well as the disciplinary sanctions referred to in paragraphs 35 to 39 of the State party's report and the mitigating or aggravating circumstances referred to in paragraphs 44 and 45 of the report, to what extent such mitigating or aggravating circumstances may increase or decrease penalties for enforced disappearance. In addition, please provide information on whether there are any initiatives to establish mitigating or aggravating circumstances regarding the crime of enforced disappearance, in accordance with article 7 (2) of the Convention (art. 7).

5. In connection with the increase of transnational organized crime in Honduras, referred to in paragraph 17 of the State party's report, and the impact that this may have on the commission of enforced disappearance by entities that are not linked to the State, please provide further information on the efforts made to investigate acts defined in article 2 of the Convention that are committed by persons or groups of persons acting without the authorization, support or acquiescence of the State and to bring those responsible to justice. In doing so, please include statistical data disaggregated by age, sex and type of offence used to prosecute such acts (arts. 3 and 12).

6. Regarding articles 15, 17, 24, 32 and 33 of the Criminal Code, please provide information on whether steps have been taken to expressly incorporate into national law the criminal responsibility of superiors as set out in article 6 (1) (b) of the Convention. In addition, taking into account articles 323 and 388 of the Criminal Code and articles 24, 33 and 123 of the Organic Law on the National Police, please provide information on whether there are legal initiatives to incorporate into national law the explicit prohibition of invoking superior orders, including from military authorities, as a justification for enforced disappearance (art. 6).

III. Judicial procedure and cooperation in criminal matters (arts. 8-15)

7. With regard to the statute of limitations in respect of enforced disappearance, please provide information on (arts. 8 and 12):

(a) How, taking into consideration paragraphs 46, 47 and 51 of its report, the State party ensures that the offence of enforced disappearance is dealt with as a continuing offence in domestic legislation, in addition to that established in the Inter-American Convention on Forced Disappearance of Persons. In addition, please clarify the term of limitation for criminal proceedings and for sentencing in respect of the crime of enforced disappearance, as well as the date from which the term of limitation commences for this offence, taking into account its continuous nature, in accordance with article 8 (1) (b) of the Convention. Lastly, please provide information on measures taken to ensure that victims can exercise their right to an effective remedy during the term of limitation for criminal, civil and administrative proceedings;

(b) Whether, regarding paragraph 16 of the State party's report, the new definition has been applied retroactively to the offences of enforced disappearance committed prior to the adoption of article 333-A, taking into account the continuous nature of the offence;

(c) The status of the new draft Criminal Code and indicate whether it includes an article that explicitly establishes that the statute of limitations will not apply to crimes

against humanity, including enforced disappearance, as indicated in paragraph 50 of the State party's report. If it does, please provide the final draft of this article.

8. With regard to jurisdiction over the offence of enforced disappearance, please:

(a) Clarify, regarding the legal measures referred to in paragraphs 53, 57 and 60 of the State party's report, whether the Honduran courts can exercise jurisdiction over offences of enforced disappearance if committed abroad, including in other States that are not parties to the Convention, irrespective of the nationality of the victim and alleged offender, in accordance with article 9 (2) of the Convention (arts. 9 and 11);

(b) Provide examples of cases where the State party has exercised its jurisdiction over offences of enforced disappearance and where the alleged perpetrator or the victim was a national of Honduras, regardless of whether they were present in the national territory (art. 9 (b) and (c));

(c) Clarify whether article 8 of the Criminal Code applies to crimes against humanity, including enforced disappearance;

(d) Report on the measures taken to ensure that all allegations of enforced disappearance committed by military personnel are investigated from the outset by the civilian authorities (art. 11).

9. Regarding paragraphs 80 to 83 of the State party's report, please:

(a) Clarify whether domestic legislation establishes enforced disappearance as an extraditable offence in all the treaties concluded by the State party with other States, whether or not they are parties to the Convention. In the absence of an extradition treaty, please clarify how the Convention may serve as a legal basis for extradition. In relation to paragraphs 83 and 84 of the State party's report and the potential obstacles that might arise from article 102 of the Constitution and the agreement that the State party concluded with the United States of America in 2002, please indicate whether the State party intends to remove any obstacles to extradition in domestic law, extradition treaties or agreements with third countries with regard to the offence of enforced disappearance (arts. 13 and 14);

(b) Provide, in the light of paragraph 82 of the State party's report, updated information on cases in which the State party has extradited an individual suspected of having committed an offence of enforced disappearance, has denied such an individual's extradition, or has sought assistance or received a request for assistance, specifying the result of such a request (arts. 9 and 13).

10. In relation to paragraphs 54 to 56 of the State party's report, as well as the provisions of article 31 of the Constitution and article 101 of the Code of Criminal Procedure, please provide additional information on the:

(a) Domestic legal measures relating to the detention of an individual who is suspected of having committed an enforced disappearance and who is present in the State party, as well as measures aimed at ensuring his or her appearance before the authorities of the State party;

(b) Existing legal provisions for notification of the arrest of an alleged offender to other States that might also have jurisdiction, as well as the circumstances of the arrest and the State party's intention to exercise its jurisdiction or not to do so.

11. With regard to investigations into cases of alleged enforced disappearance, please:

(a) Provide, in the light of paragraphs 62 to 65 of the State party's report, additional information on the process followed by the authorities to shed light on and establish the facts relating to an enforced disappearance, as well as on the measures taken to ensure that the search for individuals allegedly subjected to enforced disappearance begins immediately and that the various authorities involved in the search for disappeared persons and in the investigation of cases of enforced disappearance cooperate effectively (art. 12);

(b) Indicate whether, in the light of paragraph 66 of the State party's report, the Office of the Special Prosecutor for Human Rights has the necessary human, financial and technical resources to effectively carry out such investigations and whether officials who

work for the Office have adequate training in the investigation of cases of enforced disappearance (art. 12);

(c) Provide, in the light of the information provided in paragraph 67 of the State party's report and further to the data requested in paragraph 3 above, statistics disaggregated by sex, age and nationality, regarding: (i) the number of complaints of alleged cases of enforced disappearance received; (ii) the investigations carried out and their results, including the sentences handed down and the number of such investigations that were initiated ex officio; and (iii) the number of cases of alleged enforced disappearance that occurred before the entry into force of the Convention, the status of investigations, the measures taken and their results in terms of locating disappeared persons, taking into account the continuing nature of this grave violation of human rights in accordance with article 8 of the Convention;

(d) Indicate whether, in the light of paragraphs 72 and 73 of the State party's report, access to places of detention where there are grounds to believe that a disappeared person may be present has, in practice, been limited (arts. 12 and 17);

(e) Provide, in the light of paragraph 71 of the State party's report, more detailed information on the two mechanisms mentioned in that paragraph to ensure that complainants, witnesses, relatives of the disappeared person and his or her legal representatives, as well as persons participating in the investigation, including lawyers, prosecutors and judges, are protected against any ill-treatment and intimidation that might result from the complaints or evidence given (art. 12 (1));

(f) Describe the procedures for gaining access to these protection mechanisms and provide disaggregated statistical information on the number of persons linked to cases of enforced disappearance who have benefited from protection measures under these mechanisms;

(g) Indicate whether there have been any cases of persecution, intimidation or other acts carried out against human rights defenders working to combat enforced disappearance and, if there have been, how many and of what nature. In addition, please provide information on the measures taken to prevent, investigate and punish acts of intimidation or ill-treatment against them (arts. 12 and 24);

(h) Provide, in relation to paragraphs 74 and 75 of the State party's report, detailed information on the measures provided for by law to prevent suspects in cases of enforced disappearance from influencing investigations or threatening persons who participate in them. In that connection, please also clarify whether the law provides for suspension from duties during an investigation when the suspect is a State agent (military or civilian) and indicate whether there are mechanisms in place to exclude a law enforcement or security unit from an investigation into an enforced disappearance where one or more members of such a unit have been charged with committing the crime (art. 12).

12. Regarding paragraphs 86 to 89 of the State party's report, please indicate whether, in accordance with domestic law, limitations or conditions may be placed on requests for mutual legal assistance or cooperation under the terms of articles 14 and 15 of the Convention. In addition, please provide updated information on examples of cooperation as described in articles 14 and 15 of the Convention. In relation to possible disappearances of migrants, please provide information on the measures taken to ensure cooperation and assistance in assisting victims, as well as in searching for, locating and securing the release of disappeared persons (arts. 14-15).

IV. Measures to prevent enforced disappearances (arts. 16-23)

13. With regard to expulsion, return, surrender and extradition, please provide information on:

(a) Domestic legislation prohibiting the expulsion, return, surrender or extradition of a person to another State where there are grounds for believing that he or she would be in danger of being subjected to enforced disappearance or of other serious harm to

his or her life or physical integrity, as well as mechanisms and criteria applied to assess that risk (art. 16);

(b) The criteria used to determine the duration of administrative detention prior to the implementation of any such measures and the remedies available to appeal against them, in the light of the information supplied in paragraphs 91 to 93 of the State party's report. Please also clarify whether the appeal against a decision authorizing an expulsion, return, surrender or extradition has suspensive effect and who is entitled to lodge it.

14. With regard to deprivation of liberty, please provide information on (arts. 10, 17 and 22):

(a) Whether, in relation to the information provided in paragraphs 55, 56 and 105 of the State party's report, the legal provisions on prompt notification and access to counsel, a physician, a family member or any other person chosen by the person deprived of liberty apply from the moment of deprivation of liberty, and whether any exceptions are permitted. In this connection, please indicate whether there have been any complaints or allegations of failure to observe these rights and, if there have been, provide information on action taken and outcomes, including sentences imposed (art. 17);

(b) Existing legal provisions on consular notification in cases where the person deprived of liberty is a foreigner. Please also provide information on the measures taken to ensure that prompt communication with the consular authorities is guaranteed in practice (arts. 10 and 17);

(c) The functioning of the Inspectorate-General, in the light of paragraph 109 of the State party's report, when it comes to receiving complaints and its cooperation with other State institutions on such matters. Please also clarify whether there are any registers of persons deprived of their liberty other than those mentioned in paragraphs 111 to 113 of the report. If there are, please provide detailed information on their content and specify who may access the registers and through which procedure (arts. 17 and 22). In the light of paragraph 113 of the report, please indicate which measures have been taken to ensure that all registers of persons deprived of their liberty contain the information required under article 17 (3) of the Convention and that they are kept up to date; also indicate oversight measures;

(d) The penalties set by law in cases where an official fails to record a deprivation of liberty or enters incorrect or inaccurate information. Please indicate whether there have been any complaints of such cases and, if there have been, provide information on the sanctions imposed and measures taken, including training, to ensure that such omissions are not repeated (arts. 17, 22 and 23).

15. Please provide information on the legal and other provisions guaranteeing the right of any person with a legitimate interest to access the information referred to in article 18 (1) of the Convention. With regard to the right to prompt and effective judicial remedy as a means of obtaining information without delay, within the terms set forth in article 20 (2) of the Convention, please explain how the remedy of habeas corpus set forth in article 182 of the Constitution could be used to obtain the information specified in article 18 (1) of the Convention, as suggested in the report (paras. 114 and 126). In addition, please comment on other domestic remedies whereby such information may be obtained, and which may be invoked by persons other than the person concerned or their representative, including, for example, relatives of the detained person (arts. 18 and 20).

16. Regarding paragraph 133 of the State party's report, please provide information on the measures that the State party takes at the time of release of any person deprived of liberty, including anyone in pretrial detention, to ascertain beyond doubt that the person has been released and to ensure his or her safety and integrity and the full enjoyment of his or her rights (art. 21).

17. With regard to paragraphs 140 to 146 of the State party's report, please indicate whether any training or capacity-building programmes on the implementation of the Convention in domestic law, in particular as regards the prevention and investigation of cases of enforced disappearance, have been designed or conducted. Please indicate which categories of public officials have been targeted by these measures (art. 23).

V. Measures to provide reparation and to protect children against enforced disappearance (arts. 24-25)

18. Please explain how the definition of victim established in article 17 of the Code of Criminal Procedure is in line with the definition contained in article 24 (1) of the Convention, in cases where the disappeared person is found alive. Please also clarify whether the victims of enforced disappearance that may have occurred prior to the entry into force of the Code of Criminal Procedure also have access to the benefits provided for under it. Please indicate whether access to compensation is contingent on a criminal conviction and whether a victim of enforced disappearance has to initiate criminal proceedings in order to be recognized as such. Please also indicate whether, in domestic legislation, there is an express provision on the obligation to guarantee the right of the victim to know the truth about the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person. Please also report on the progress made in relation to advancing the right to truth, justice, reparation and guarantees of non-repetition. Lastly, please state whether there are any public policies aimed at restitution, rehabilitation, satisfaction and guarantees of non-repetition for victims of enforced disappearance and, if there are, which State bodies are responsible for their formulation and how many victims have benefited from these programmes since the Convention entered into force (art. 24).

19. Please describe the results obtained to date through the national reparations programme established by Executive Decree PCM-028-2008 as mentioned in paragraph 156 of the State party's report. Please indicate whether any legal instruments have been adopted that provide for the restoration of the rights of victims of enforced disappearance, taking into account a gender perspective. Please provide information about current legislation on the legal status of disappeared persons whose fate has not been clarified and their relatives, in matters such as social welfare, financial matters, family law and property rights (art. 24).

20. In connection with paragraphs 150 and 152 of the State party's report, please indicate to what extent the Pathology Division of the Forensic Medicine Department of the Public Prosecution Service has been successful in handing over the mortal remains of disappeared persons to their families and relatives to date. Please also describe the steps taken to establish a computerized system for managing the genetic material of missing persons that is currently stored on FTA cards. Please state what has been done to locate clandestine graves and provide statistical data on persons located and identified, or yet to be identified, since the entry into force of the Convention, while indicating the obstacles that the State party may face in this regard (art. 24).

21. Please state whether the State party has a mechanism for starting an immediate and urgent search for missing persons who may still be alive. If it does not, please state whether the State party plans to establish and operate such a mechanism in order to search for persons who may still be alive (art. 24 (3)).

22. Please describe the outcome of the adoption of the Special Act on the Promotion of Non-Governmental Organizations for Development, which provides for the right of association referred to in article 78 of the Constitution, and the Act on the Protection of Human Rights Defenders, Journalists, Social Communicators and Justice Officials. In this connection, please provide information on the measures taken to guarantee that the right to form and participate freely in organizations and associations, as set out in article 24 (7) of the Convention, is observed in practice (art. 24).

23. Please indicate whether the State party intends to take measures to harmonize its criminal legislation with article 25 (1) (a) and (b) of the Convention. Please provide information on the steps taken by the State party in connection with the search and identification, *proprio motu*, of disappeared children and existing domestic mechanisms in that regard; in addition, indicate whether there are domestic remedies for returning them to their families of origin and report on the existence of any DNA databases. Please also describe the procedures in place to guarantee that disappeared children may exercise their right to have their true identity re-established. Please indicate how the principle of the best

interests of the child is upheld de jure and de facto in the domestic courts. Lastly, please provide additional information on the State party's informal efforts to cooperate with other States in the search and identification of children of disappeared parents (art. 25).

24. Please elaborate on the procedures in place to review and, where appropriate, annul any adoption, placement or guardianship that originated in enforced disappearance. Please provide information on possible limitations on actions for annulment of adoptions that originated in enforced disappearance and, if there are any, explain how these limitations are in line with article 25 of the Convention. Otherwise, please describe the steps taken to revoke limitations that are in breach of the Convention. If no such procedures have been put in place, please indicate whether there are any plans to bring domestic legislation in line with article 25 (4) of the Convention. Please provide information on programmes in place to assist adults who believe themselves to be children of disappeared parents to recover their true identity. Lastly, please submit information on the procedures prescribed to uphold the right of families to search for child victims of enforced disappearance (art. 25).